UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 15 CR 690 (VM)(JC)

ASHRAF LAKOU,

Defendant.

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New York, N.Y.
April 12, 2016
11:25 a.m.

Before:

HON. JAMES L. COTT,

Magistrate Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
JONATHAN COHEN
Assistant United States Attorney

MYERS, SINGER & GALIARDO, LLP
Attorneys for Defendant
BY: MATTHEW D. MYERS

ALSO PRESENT:
David Fankhauser, Special Agent

(Case called)

MR. COHEN: Jonathan Cohen on behalf of the government.

With me at Counsel table is Special Agent David Fankhauser from the Department of State.

Good morning, your Honor.

THE COURT: Good morning.

MR. MYERS: Matthew Myers on behalf of Mr. Lakou.

Good morning, your Honor. How are you?

THE COURT: Let's go off the record for a second.

(Discussion off the record)

THE COURT: Mr. Lakou, I have before me a form that's called a Consent to Proceed Before a United States Magistrate Judge on a Felony Plea Allocution form that you have signed. What the form says is that, knowing that you have the right to have your plea taken before a United States District Judge, you are nonetheless agreeing to have your plea taken this morning in magistrate's court. Is that correct.

THE DEFENDANT: Yes, your Honor.

THE COURT: Did you discuss consenting to have a plea taken here this morning with Mr. Myers before you signed the form?

THE DEFENDANT: Yes, your Honor.

THE COURT: I will accept the consent.

Now, Mr. Lakou, the purpose of this proceeding today is to make sure that you understand all of your rights, to decide whether you are pleading guilty of your own free will, and to make sure you are pleading guilty because you are guilty and not for some other reason. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: If at any time you do not understand any of the questions that I am going to be asking you during this proceeding or you want to consult with Mr. Myers, please let me know, because it is extremely important that you understand every question before you answer. All right?

THE DEFENDANT: All right.

THE COURT: Now, before I take your plea, as I said, I am going to be asking you a series of questions, and therefore I need to place you under oath.

If you will please stand again briefly and raise your right hand.

(Defendant sworn)

THE COURT: Do you understand, Mr. Lakou, that the statements that you make here today under oath and may be used against you in a prosecution for perjury or for making false statements if you do not tell the truth?

THE DEFENDANT: Yes, your Honor.

THE COURT: Please tell the court your full name.

THE DEFENDANT: Ashraf Lakou.

THE COURT: How old are you?

THE DEFENDANT: 27.

THE COURT: Are you a citizen of the United States?

THE DEFENDANT: No.

THE COURT: Where are you from?

THE DEFENDANT: Sudan.

THE COURT: You're a citizen of Sudan?

THE DEFENDANT: I am no longer a citizen of Sudan. I am stateless currently.

THE COURT: I see. Are you able to read and write in English?

THE DEFENDANT: Yes.

THE COURT: How far did you go in school?

THE DEFENDANT: High school.

THE COURT: Are you now or have you recently been under the care of a doctor or a psychiatrist for any reason?

THE DEFENDANT: Yes.

THE COURT: Is that something that is taking place while you are incarcerated?

THE DEFENDANT: It is now, as well, yes.

THE COURT: What are you being treated for?

THE DEFENDANT: Bipolar and depression.

THE COURT: I see. Are you taking any medication as a result of that treatment?

THE DEFENDANT: Yes.

THE COURT: What medication are you taking?

THE DEFENDANT: I was on Risperdal, now they put me on Prozac and BuSpar.

THE COURT: I see. The medication, did you take any of that medication today?

THE DEFENDANT: Yes.

THE COURT: Does that medication affect your ability to think or reason or understand in any way?

THE DEFENDANT: No.

THE COURT: Does it affect your ability to make judgments or make decisions?

THE DEFENDANT: No.

THE COURT: As you sit here today, other than the drug that you mentioned, are you under the influence of any mind-altering drug or any alcohol?

THE DEFENDANT: No.

THE COURT: Have you been able to understand everything that I have said to you so far today?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you feel all right today?

THE DEFENDANT: Yes, your Honor.

THE COURT: Mr. Myers, do you have any question about your client's ability to proceed or his competency?

MR. MYERS: No, Judge.

THE COURT: Mr. Cohen, do you?

MR. COHEN: No, your Honor?

THE COURT: Mr. Lakou, have you seen a copy of the indictment in this case?

THE DEFENDANT: Yes, I have, your Honor.

THE COURT: Have you read it?

THE DEFENDANT: Yes, I have.

THE COURT: Do you understand what it says that you did?

THE DEFENDANT: I understood it basically, but not in depth.

THE COURT: Have you discussed the charges in the indictment with Mr. Myers?

THE DEFENDANT: Yes, I have.

THE COURT: Have you had a chance to discuss with him how you wish to plead with respect to those charges?

THE DEFENDANT: I have, yes, your Honor.

THE COURT: Are you satisfied with his representation of you?

THE DEFENDANT: Yes, I am.

THE COURT: Have you had a full opportunity to discuss the case with him?

THE DEFENDANT: I have to a satisfactory level, yes.

THE COURT: And has he discussed with you the consequences of pleading guilty today?

THE DEFENDANT: He has, yes.

THE COURT: Are you ready to enter a plea at this time?

THE DEFENDANT: Yes, your Honor.

THE COURT: I understand that you're going to be pleading guilty to Counts One through Six of the indictment.

Is that the understanding of the government, Mr. Cohen?

MR. COHEN: Yes, your Honor.

THE COURT: Is that your understanding, Mr. Myers?

MR. MYERS: Yes, your Honor.

THE COURT: Mr. Lakou, what I intend to do is review each count with you one at a time, the charge in the count and the penalty associated with that count, and then ask you to plead guilty or not guilty to each one of those counts. All right?

THE DEFENDANT: Yes.

THE COURT: With respect to Count One, that charges you with participating in a conspiracy to commit access to device fraud in violation of federal law. That charge carries a maximum term of imprisonment of seven and a half years, a maximum term of supervised release of three years, a maximum fine pursuant to federal law of the greatest of $250,000, twice the gross gain derived from the offense, or twice the gross loss to persons other than you resulting from the offense, and a $100 mandatory statement.

Do you understand the charge in Count One and the penalties that are associated with that charge?

THE DEFENDANT: Yes, your Honor.

THE COURT: How do you wish to plead to Count One; guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: With respect to Count Two, that charges you with aggravated identity theft in violation of federal law. That charge carries a mandatory term of imprisonment of two years, which must be served consecutively to any sentence imposed on Count One, Count Three or Count Five of the indictment. It also carries a maximum term of supervised release of one year, a maximum fine pursuant to federal law of the greatest of $250,000, twice the gross gain derived from the offense or twice the gross loss to persons other than you resulting from the offense, and a $100 mandatory statement.

Do you understand the charge in Count Two and the penalties associated with that charge?

THE DEFENDANT: Yes, your Honor.

THE COURT: How do you wish to plead to Count Two; guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: With respect to Count Three, that charges you with participating in a conspiracy to commit bank fraud in violation of federal law, and that charge carries a maximum term of imprisonment of 30 years, a maximum term of supervised release of five years, a maximum fine of $1 million, and a $100 mandatory statement.

Do you understand the charge in Count Three and the penalties associated with that charge?

THE DEFENDANT: Yes, your Honor.

THE COURT: How do you wish to plead to Count Three?

THE DEFENDANT: Guilty.

THE COURT: With respect to Count Four, that charges you with aggravated identity theft in violation of federal law and carries a mandatory term of imprisonment of two years, which must be served consecutively to any sentence imposed on Counts One, Three or Five of the indictment. It also carries a maximum term of supervised release of one year, a maximum fine pursuant to federal law of the greatest of $250,000, twice the gross gain derived from the offense or twice the gross loss to persons other than you resulting from the offense, and a $100 mandatory special assessment.

Do you understand the charge in Count Four and the penalties associated with that charge?

THE DEFENDANT: Yes, your Honor.

THE COURT: How do you wish to plead; guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: With respect to Count Five, that charges you with making false statements in a passport application and using a passport secured by false statements in violation of federal law. That charge carries a maximum term of imprisonment of ten years, a maximum term of supervised release of three years, a maximum fine pursuant to federal law of the greatest of $250,000, twice the gross gain derived from the offense or twice the gross loss to persons other than you resulting from the offense, and a $100 mandatory special assessment.

Do you understand the charge in Count Five and the penalties associated with that charge?

THE DEFENDANT: Your Honor, can you repeat the time that I would have to do for this charge?

THE COURT: For Count Five?

THE DEFENDANT: Yes.

THE COURT: Count Five carries a maximum term of imprisonment of ten years, a maximum term of supervised release of three years, a maximum fine of the greatest of $250,000, twice the gross gain derived from the offense or twice the gross loss to persons other than you resulting from the offense, and a $100 mandatory assessment.

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: How do you wish to plead to Count Five?

THE DEFENDANT: Guilty.

THE COURT: The last charge is Count Six, which charges you with aggravated identity theft in violation of federal law. Count Six carries a mandatory term of imprisonment of two years, which must be served consecutively to any sentence imposed on Counts One, Three or Five of the indictment. It also carries a maximum term of supervised release of one year, a maximum fine pursuant to federal law of the greatest of $250,000, twice the gross gain derived from the offense or twice the gross loss to persons other than you resulting from the offense, and a $100 mandatory statement.

Do you understand the charge in Count Six and the penalties associated with that charge?

THE DEFENDANT: If I may, your Honor, just ask my attorney a question?

THE COURT: Yes, you may.

(Discussion off the record)

THE DEFENDANT: Your Honor?

THE COURT: Yes.

THE DEFENDANT: On Count Six, how does it transform into aggravated identity theft from false use of passport?

THE COURT: How does it transform? You mean why --

THE DEFENDANT: Yeah. Because it is being named as aggravated identify theft. Originally I was told that it is just use of false -- false use of passport.

THE COURT: I believe that is Count Five, but let me ask Mr. Cohen to see if he can address that issue.

Mr. Cohen?

MR. COHEN: Of course, your Honor.

So, Count Five is the obtaining of the passport in 2010, and then in the name of an individual other than the defendant, who is a real person, and then using that passport later. Count Six is aggravated identity theft, so it is the use of the means of identification of another person; in this case, the Georgia individual that I just mentioned in connection with committing Count Five.

So, Count Six is the identity, aggravated identity theft portion that has to be linked to a felony, and here it is linked to the felony to this charge in Count Five.

So it is the use of -- I don't want to say the victim's name here -- but it is the use of that victim's name and identifying information to turn around, make a passport application in 2010. He successfully obtained that passport in this other person's name and then ultimately changed -- you know, used Brooklyn courts to change his name from the victim's name to a third name, and applied for a 2014 passport in that third name.

So Count Six is the aggravated identity theft that is attached to the passport conduct.

THE COURT: Do you understand what the prosecutor just said, Mr. Lakou?

THE DEFENDANT: I do. Yes, your Honor.

THE COURT: As a result of the clarification or supplement that he has made on the record and my review of the charge in Count Six, as well as the penalties associated with that charge, how do you wish to plead to Count Six?

THE DEFENDANT: Before I plead, there is no mandatory minimum, correct?

THE COURT: With respect to Count Six?

THE DEFENDANT: Yes.

THE COURT: There is a mandatory minimum of two years for Count Six.

THE DEFENDANT: There is?

THE COURT: Yes.

THE DEFENDANT: I wish to plead guilty, your Honor.

THE COURT: Let me also say, as your agreement with the government states, that the total maximum term of imprisonment on Counts One through Six of the indictment is 53 and a half years, which includes a mandatory minimum term of two years. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Am I correct that as part of your plea agreement with the government, you are also admitting to the forfeiture allegations with respect to Counts One, Three, and Five of the indictment?

THE DEFENDANT: Yes, your Honor.

THE COURT: And am I also correct that as part of your plea agreement, you are agreeing to make restitution in the amount of $557,894.50? Is that part of your agreement with the government?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand, Mr. Lakou, as part of your sentence, if you are placed on a term of supervised release and then you violate any of the terms and conditions of that release, you could face an additional term of imprisonment? Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you also understand that your guilty plea may result in your being removed from the United States, denied citizenship in the United States, and denied admission to the United States in the future?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that you're going to be bound by your guilty plea regardless of the immigration consequences of your plea and regardless of any advice you have received from your attorney, or from anyone else for that matter, regarding those consequences?

THE DEFENDANT: Yes, your Honor.

THE COURT: Have you specifically discussed the immigration consequences of your plea with Mr. Myers?

THE DEFENDANT: I have, your Honor, and I have also discussed them with an immigration lawyer.

THE COURT: Very well.

At this juncture, Mr. Lakou, I want to review with you a number of rights that you have that you're going to be giving up as a result of the guilty plea here today.

Do you understand, first of all, that you have the right to continue to plead not guilty to the charges in the indictment and a right to a speedy and public jury trial, if you wish? Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that if you were to continue to plead not guilty and go to trial, you would be presumed innocent and the burden would be on the government to prove your guilt beyond a reasonable doubt? Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that you would be entitled to be represented by an attorney at all stages of the proceedings, at trial and at every other stage, and if you could not afford to hire or retain an attorney, the court would provide an attorney to you for free?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that if there were a trial in your case, you would be entitled to confront and cross-examine any of the witnesses called by the government to testify against you?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand you would be entitled to testify on your own behalf?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that you could call witnesses and present evidence if there were a trial?

THE DEFENDANT: Yes, your Honor.

THE COURT: And do you understand that you could ask the court to issue subpoenas to compel witnesses to appear and testify in your defense, even if they did not wish to otherwise come to court?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that if there were a trial, you would not be required to testify against yourself?

THE DEFENDANT: Yes, your Honor.

THE COURT: And if you chose not to testify, that fact could not be used against you?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand if you went to trial and were convicted at trial, you would still have the right to appeal that conviction to a higher court?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that by entering a guilty plea here today, you will be giving up all of the rights that I have just reviewed with you, including your right to a trial, you will not be able to withdraw include plea, and the only remaining step in this case will be the sentencing? Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that the decision as to the appropriate sentence in your case will be entirely up to the sentencing judge, who in this case is Judge Marrero, and he will be limited only by what the law requires?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that even if you are surprised or disappointed by your sentence, you will still be bound by your guilty plea?

THE DEFENDANT: Yes, your Honor.

THE COURT: Knowing everything that I have just reviewed with you, do you still wish to plead guilty to Counts One through Six of the indictment?

THE DEFENDANT: Yes, your Honor.

THE COURT: Has any force or have any threats of force been used either directly or indirectly to influence how you plead today?

THE DEFENDANT: No, your Honor.

THE COURT: Now, I have before me a plea agreement that is dated March 11, 2016, to your attorney from the government that contains the plea agreement in your case. Have you read this letter?

THE DEFENDANT: Yes, your Honor.

THE COURT: Did you sign it on the last page?

THE DEFENDANT: Yes, I have, your Honor.

THE COURT: Before you signed it, did you discuss it with Mr. Myers?

THE DEFENDANT: I have, your Honor, yes.

THE COURT: Did he explain to you all of the terms and conditions in this agreement?

THE DEFENDANT: He has, your Honor, yes.

THE COURT: Apart from what is contained in the letter, have any promises been made to you in order to get you to plead guilty?

THE DEFENDANT: No, your Honor.

THE COURT: Now, in reviewing the agreement, I note that beginning on page three, it contains an analysis of how part of our law of sentencing known as the sentencing guidelines may impact on any prison term in your case.

Based on that analysis, on page five of the agreement, it says the following: That your guidelines range on Counts One, Three, and Five is 70 to 87 months' imprisonment, and your guideline range on Counts Two, Four, and Six is a mandatory consecutive 24 months' imprisonment, for an aggregate stipulated guideline range of 94 to 111 months' imprisonment. Do you understand that that is what the agreement provides?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that Judge Marrero is not going to be bound by the calculation that is in this letter and he is going to be free to come up with his own calculation, which may result in a range that is different from the one that is in the letter?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that no matter what sentencing range Judge Marrero believes is called for by the guidelines, that range is just one of many factors that he is going to consider in determining your sentence, and he has the discretion to give you a prison sentence below or above the range anywhere up to the maximum sentence of imprisonment we spoke about a few minutes ago?

THE DEFENDANT: Yes, your Honor.

THE COURT: You also understand that under the terms of your agreement, if Judge Marrero sentences you to a prison term that is 111 months or less, you will be giving up your right to appeal that sentence or to challenge it in any other way, such as through a writ of habeas corpus? Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that in the letter, you are also giving up your right to complain if the government withheld evidence from your attorney that would have been helpful to you?

THE DEFENDANT: Yes, your Honor.

THE COURT: Now, Mr. Lakou, is your plea voluntary? And what I mean by that is, is it made of your own free will?

THE DEFENDANT: Yes, your Honor.

THE COURT: Did you, in fact, commit the offenses that are charged in Counts One through Six of the indictment?

THE DEFENDANT: Yes, I have, your Honor.

THE COURT: Now, before I ask you to tell the court what you did that makes you guilty of these charges, I am going to ask the government to review the elements of each one of the charges, and then to advise the court what the evidence would have been if there had been a trial in your case.

Mr. Cohen.

MR. COHEN: Yes, your Honor.

We will start with Count One, which is a count that charges conspiracy to commit access device fraud, in violation of Title 18, United States Code, 1029(b)(2). There are two charged objects, one is 1029(a)(2) and one is 1029(a)(5). For those two charged objects, those two substantive offenses, I am going to do the substantives first and then the conspiracy elements right after that, your Honor.

The four elements of violations of 1029(a)(2) and 1029(a)(5) are the following:

First, that an access device is involved;

Second -- here is where it deviates for the two substantive sections -- for 1029(a)(2), the second element is that a defendant trafficked in or used one or more unauthorized access devices during any one-year period and in so doing obtained anything of value;

For Section 1029(a)(5), the second element is that a defendant used one or more access devices issued to another person or persons during any one-year period and in so doing obtained anything of value amounting to $1,000 or more;

The third element of both of those substantive offenses is that the defendant acted knowingly, willfully, and with intent to defraud;

The fourth element is that interstate or foreign commerce was affected by a defendant's actions.

Those are the elements of the substantive objects.

The elements of the conspiracy, 1029(b)(2), are the following. There are three of them:

First, that there existed an agreement between two or more persons to violate Section 1029(a)(2) or to violate Section 1029(a)(5);

The second element of the conspiracy charge is that the defendant knowingly and willfully participated in the conspiracy; and

Third, the third element is a member of the conspiracy committed an overt act in furtherance of the conspiracy.

Counts Two, Four, and Six all charged aggravated identity theft under Title 18, United States Code, Section 1028A. So I'll do the elements for those three counts in one fell swoop.

A violation of Title 18, United States Code, Section 1028A has four elements:

First, that the defendant knowingly used or transferred or possessed a means of identification of another person;

Second, that the defendant did so during and in relation to the offense identified in the indictment;

Third, that the defendant acted without lawful authority;

Fourth, that the means of identification was that of a real person and the defendant believed that person to be a real person.

Count Three, your Honor, charges conspiracy to commit bank fraud in violation of Title 18, United States Code, Section 1349. I'll do this the same way as I did Count One, which is give the substantive elements first and then the elements of a violation of the conspiracy statute.

The substantive crime of committing bank fraud in violation of Section 1344 has three elements:

First, that there was a scheme to defraud a financial institution or a scheme to obtain money or funds owned or under the custody or control of a bank by means of materially false or fraudulent pretenses, representations or promises;

Second, that the defendant executed or attempted to execute the scheme with the intent to defraud the financial institution or to obtain money or funds owned or under the custody or control of the financial institution; and

Third, at the time of the execution of the scheme, the bank had its deposits insured by the FDIC, the Federal Deposit Insurance Corporation.

The conspiracy statute charged here in Count Three has two elements:

First, that there existed an agreement between two or more persons to violate Section 1344, which is the statute I just described; and

Second, that the defendant knowingly and willfully participated the conspiracy.

The final count here that I haven't gone over yet is Count Five. That charges false statement in an application and use of a U.S. passport. So they have this broken out as the elements for making a false statement in an application and also the elements of using a passport. We have charged both here because Mr. Lakou used the passport after he obtained it through false statements.

First, the crime of making a false statement in an application for a United States passport, in violation of Title 18, United States Code, 1542, has three elements:

First, the defendant made a false statement in an application for a United States passport;

Second, that the defendant made that false statement with the intent to secure the issuance of a passport for his or her own use or for the use of another; and

Third, that the defendant acted knowingly and willfully.

The crime of using a passport that was secured by a false statement, which is also in violation of Title 18, United States Code, Section 1542, has three elements:

First, that the defendant used the United States passport;

Second, that the passport was secured in any way by reason of a false statement;

Third, that the defendant acted knowingly and willfully.

Your Honor, would you like me to continue with the proof at this point?

THE COURT: If it's your pleasure to do so.

MR. COHEN: Thank you, your Honor.

The government's proof here would come from a variety of sources. There is video footage of the defendant and his coconspirators committing these crimes, there is a lot of video, stills and there is video from various banks and from jewelry stores, more than one video from jewelry stores in connection with the credit card fraud.

We have the bank records themselves, which will show that fraudulent accounts were opened so that they could fraudulently cash checks.

We would have much victim testimony. That would be both victims whose names and identifiers were used in connection with these schemes, but also victims of the victim businesses who would testify about checks and why certain checks were on their face fraudulent and not legitimate checks from the business.

We would have, in connection with the passport fraud, we would have the passport application that has the picture of Mr. Lakou, and we do have this, and has the name of somebody entirely different, who is this victim I have referred to earlier as the Georgia individual, as well as the passport application from 2014 that allowed Mr. Lakou to get a passport in an additional name.

I am happy to supplement that if the court has any questions.

THE COURT: No. I think that is sufficient at this time, Mr. Cohen.

Mr. Lakou, at this time, would you please tell the court in your own words what you did that makes you guilty of the six counts in the indictment?

THE DEFENDANT: Yes, your Honor.

For Count One, conspiracy to commit access device fraud, I conspired and agreed with my codefendants --

THE COURT: Mr. Lakou, I am sorry to interrupt. If you're reading from something, which is perfectly fine, pull the microphone closer and read slowly, so the court reporter can will be able to keep up and so that I can keep up. Most importantly so the court reporter can record what you're saying, read a little slower.

THE DEFENDANT: I'm sorry, your Honor.

THE COURT: No problem.

THE DEFENDANT: For Count One, conspiracy to commit access device fraud. I conspired and agreed with my codefendants, Zoheb Qamran and Jessica Hatten, from May 2014 through July 2015, here in the Southern District of New York, I made purchases on credit cards without the permission of the owners. Out of those credit cards, the values of the items we purchased with those unauthorized cards exceeded $1,000.

Specifically I, along with my codefendants, purchased $9,000 worth of jewelry in 2014, used unauthorized credit cards at a movie theater, and purchased, on a separate date in 2014, more jewelry worth $16,000 in Queens, New York, here in the Southern District of New York.

I illegally obtained identifying information from a person I did not have permission from to take his information in May 2014.

In December 2014, I again purchased jewelry using the unauthorized credit card for $8,000 in Queens, New York.

I used these unauthorized credit cards with intent to defraud the rightful card holder and owner, and I am aware that the interstate commerce was affected by my actions.

THE COURT: Is that what you're allocuting to with respect to Count One?

THE DEFENDANT: Yes, your Honor.

THE COURT: Before we go to the next one, let me ask Mr. Cohen, is there anything further you would want me to ask the defendant with respect to his allocution as to Count One?

MR. COHEN: Yes, your Honor. I could proffer it as well, your Honor.

The movie theater was in the Southern District of New York. The jewelry stores in Queens were not in the Southern District of New York. Independent of that, with the illegally obtaining identifying information, that information was stolen at a building on Broadway in Manhattan. That would be a separate basis for Southern District venue than the movie theater purchase.

THE COURT: I gather, Mr. Myers, no issue with respect to venue?

MR. MYERS: There is not, Judge.

I just added for his allocution, which he forgot, that the information was obtained from the mail at 1441 Broadway here in Manhattan.

THE COURT: Is that correct, Mr. Lakou?

THE DEFENDANT: Yes, your Honor.

THE COURT: All right. Mr. Cohen, any other questions you want the court to ask with respect to Count One?

MR. COHEN: No, your Honor.

THE COURT: You may proceed.

THE DEFENDANT: For Count Two, aggravated identity theft. I, along with my codefendants, used identifying information of others to obtain unlawful credit cards during 2014. After receiving the unlawful credit cards, we obtained goods and services during 2014. I used the victim' names, identifying information of these persons, to obtain these cards.

Specifically I, along with my codefendants, added our names to credit cards, which we were not the rightful owners of, without the victims' knowledge or permission. Once we received the illegal credit cards, we used the cards to purchase various items without the owners' permission or authority.

THE COURT: Is there any issue with respect to venue as to this charge? I assume there is not as to any of them. I will ask in an abundance of caution.

MR. COHEN: For Count Two, your Honor, the venue is derivative on Count One because the 1028A is attached to the underlying conduct.

THE COURT: Is there any other question you would want me to ask Mr. Lakou about his allocution to Count Two?

MR. COHEN: Yes, your Honor.

I just would like to confirm that Mr. Lakou knew that at least one of the individuals whose identity information he was using was a real person. I believe Mr. Lakou literally spoke on the telephone to one of the victims while he was committing the crime. It is one of the elements of 1028A.

THE COURT: Did you understand, Mr. Lakou, that at least one of the individuals was, in fact, a real person that you spoke with who whose identity you were taking?

THE DEFENDANT: Yes, your Honor.

THE COURT: Mr. Cohen, other questions?

MR. COHEN: No, your Honor.

THE COURT: All right. Mr. Lakou, do you want to proceed to your allocution with respect to Count Three?

THE DEFENDANT: Yes.

For bank fraud conspiracy, I committed bank fraud, along with my codefendants, in that I opened a business account by using false documents, using the false pretense that our documents were legitimate, namely, that we had an H1-B business Visa on file with the government, when in fact we did not. I, along with my codefendant Qamron, deposited a check in the amount of $193,000 payable to my codefendant, Mr. Qamron. We withdraw $40,000 of the 193,000 without the permission or authority of the bank or rightful owner.

THE COURT: Mr. Cohen, further questions on that allocution?

MR. COHEN: Your Honor, we could proffer as to venue that the withdrawal of the 40,000 came from a bank branch, Mr. Lakou and Mr. Qamron were in Times Square withdrawing that money from a Times Square bank branch. That would be the basis for venue there.

I think that's all, your Honor.

THE COURT: Is that correct, Mr. Lakou?

THE DEFENDANT: Yes, your Honor.

THE COURT: Why don't you do Count Four.

THE DEFENDANT: Aggravated identity theft. I committed aggravated identity theft. I, along with my codefendants, used, without lawful authority, the names of actual other persons in relation to the fraudulent checks we deposited without permission or authority or knowledge of the persons whose identity we stole and used. We used the identity of others to obtain credit cards and set up bank accounts and withdrew money from the accounts without permission or authority of those persons whose identity we stole.

THE COURT: Mr. Cohen, any followup questions you want to ask?

MR. COHEN: Your Honor, just to confirm that on the

$1593,000 check, the signature of the individual whose name was written there was forged. We have confirmed that with the victim, but that would be our basis for the aggravated identity theft.

THE COURT: Is that correct, Mr. Lakou, the signature was, in fact, forged --

THE DEFENDANT: Yes, your Honor.

THE COURT: -- on the check that Mr. Cohen just referred to?

THE DEFENDANT: Yes, your Honor.

THE COURT: Mr. Cohen, anything else?

MR. COHEN: One moment, your Honor.

No, your Honor.

THE COURT: All right. With respect to Count Five, Mr. Lakou.

THE DEFENDANT: False statements and application and use of passport. I made a false statement in an application for a U.S. passport. I made that false statement with the intent to not only obtain the passport, but use the passport for my own use. I acted in a knowing fashion when I made the application and obtained the passport. From July 7, 2010 to June 4, 2014, I made a purposeful and material omission regarding names I had used in the past. And once I obtained illegal passport, I used it from June 2014 to August 2014.

THE COURT: Mr. Cohen, any followup questions you want me to pose?

MR. COHEN: No, your Honor.

We would just proffer the venue is that, among other places, he used the passport, among other occasions, he used the passport to open a bank account on August 1, 2014, in Manhattan, as described in the complaint. That's the basis for the venue of Count Five. We are proffering that.

THE COURT: All right. That, I assume, is not contested, Mr. Myers?

MR. MYERS: No, Judge.

THE COURT: Lastly, with respect to Count Six, Mr. Lakou.

THE DEFENDANT: If I may, your Honor, make a statement about Count Six? Is that something possible?

THE COURT: Talk to your lawyer before you make any statement.

(Discussion off the record)

THE COURT: Are we going to proceed with an allocution on Count Six?

MR. MYERS: We are, Judge.

The only issue is that Mr. Lakou actually purchased in a legal way voluntarily using $500 and obtained that information.

I think the prosecutor can explain why, in the future, even if you obtain information from an individual and have purchased passport information, that there is an illegality behind that.

MR. COHEN: Judge, we don't contest that he purchased this identity for $500. He admitted that in his post-arrest. And, in fact, our position is that even with permission on that initial purchase, the individual from whom that identity was bought did not know the scope of the conduct that Mr. Lakou would engage in over the next four years with that identity.

And secondly, I have an opinion from Judge Marrero himself on the question of whether -- and your Honor could judge for himself all this from Judge Marrero's opinion -- but basically in the context of an individual selling their identity to be used by a defendant, that that still constitutes 1028A. And Judge Marrero, in an order from 2014, specifically decided that question.

THE COURT: Do you want to state for the record what case you're referring to?

MR. COHEN: Yes.

It is United States v. Natalia Ivanova. I-v-a-n-o-v-a. That's 11 CR 614. It is docket No. 371 on the docket. The discussion of the judge's order of this precise issue starts on page 11.

Certainly, your Honor, we will be sending this -- assuming your Honor agrees, we will be sending this allocution to Judge Marrero, asking the judge to accept the plea, as we do in any case, but our position is that even when somebody sells their identity to a defendant, that that can be the basis for a 1028A.

We have no problem with the defense's allocution being that he bought the identity in 2010 for $500 and proceeded to use it illegally in a variety of ways. We believe that that still meets the elements of the crime.

We had previously given Mr. Myers a copy of that opinion from Judge Marrero. I can read the last two sentences on page 18, your Honor.

THE COURT: This is of Judge Marrero's opinion in that other case?

MR. COHEN: Exactly. This is from Judge Marrero's opinion. I'll actually read that last paragraph on page 18.

"For those reasons, the Court rejects Ivanova's claim that Count Four should be dismissed insofar as it applies to Mangan and Norris. Even if those two individuals gave Ivanova permission to use their means of identification, a jury could properly convict Ivanova if that permission was granted only to an unlawful end. The Court agrees with the findings of the five Courts of Appeals that have held that permission to use a means of identification for the purpose of committing fraud does not constitute "lawful authority."

THE COURT: Mr. Myers, how is your client going to proceed with respect to his allocution of Count Six?

Are we going forward with it or no?

MR. MYERS: I'm sorry, Judge. Can I have a moment with the prosecutor?

THE COURT: You may.

(Discussion off the record)

MR. MYERS: Judge, I think potentially he can allocute on that.

THE COURT: All right. Mr. Lakou, why don't you proceed, and let's hear when what you have to say with respect to Count Six.

THE DEFENDANT: Yes.

For Count Six, aggravated identity theft. I purchased Mr. Chockman's passport for $500 and used it to commit passport fraud.

THE COURT: And in doing that, you knew that was unlawful?

THE DEFENDANT: Yes, your Honor.

THE COURT: And you were using another person's identification unlawfully, is that correct?

You used this other individual's name to obtain a passport fraudulently, correct? Is that right?

THE DEFENDANT: Correct. Yes, your Honor.

THE COURT: Mr. Cohen, what else did you want to ask, if anything?

MR. COHEN: We believe that is legally sufficient, your Honor.

THE COURT: All right. Does the government represent that it has sufficient evidence to establish Mr. Lakou's guilt with respect to all of these counts beyond a reasonable doubt?

MR. COHEN: Absolutely, your Honor.

THE COURT: Mr. Myers, do you know of any defense that would prevail at trial or any other reason why your client should not be permitted to plead guilty at this time?

MR. MYERS: No, Judge.

THE COURT: Are there any further questions either counsel wants me to ask on the record as part of this proceeding, Mr. Cohen?

MR. COHEN: No, your Honor.

THE COURT: Mr. Myers?

MR. MYERS: I didn't have any other questions, Judge.

I did want to add that we did get permission from Judge Marrero to hire an immigration expert. When that came up, this immigration situation is very complicated. He is literally a man without a state, because Sudan, the government fell into South Sudan, and because of his status, he may not even have status in either of those countries.

I won't belabor the record with that, but I did want to make clear, because I think this is going to come up in some immigration court, I am not an immigration expert, I know a lot of judges just simply, by way of course, ask if I have discussed that with him.

I have, but I did take the extra step to have CJA appoint an immigration lawyer. She flew up from Georgia, Sarah Elizabeth Dill, and she was assigned and she went over all these immigration issues with Mr. Lakou.

THE COURT: I appreciate your putting that on the record.

I did ask Mr. Lakou, as part of the proceedings, that he understands that his plea will have immigration consequences.

And you do understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: I should say may have immigration consequences. It is not for me to say.

THE DEFENDANT: Yes, your Honor.

THE COURT: But for our purposes, I just want to make sure that you understand that by pleading guilty to these charges, that could have consequences for your ability to remain in the United States and your ability to ever become a United States citizen.

THE DEFENDANT: Yes, your Honor.

THE COURT: Is there anything further on that particular issue you think I should have to ask.

MR. COHEN: Not from us, your Honor.

MR. MYERS: No, your Honor.

THE COURT: Is there any reason either counsel knows of that I should not recommend that Judge Marrero accept the plea as it has been allocuted on the record at this time?

THE DEFENDANT: No, your Honor.

MR. COHEN: No, your Honor.

THE COURT: On the basis of all of Mr. Lakou's response to my questions and my observations of his demeanor, I find that he is fully competent to enter an informed plea at this time. I also conclude that he understands the nature of the charges and the consequences of his plea. I am also satisfied that his plea is voluntary and that there is a factual basis for it.

Accordingly, I recommend that the proffered plea to Counts One through Six of the indictment be accepted.

I assume the government will order a copy of the transcript of this proceeding and will submit it to Judge Marrero, together with any other paperwork, so that he may act on this recommendation.

Will you do that, Mr. Cohen?

MR. COHEN: We will do so promptly, your Honor.

THE COURT: Has he scheduled a sentencing date in this case?

MR. COHEN: I spoke to chambers. I am supposed to call chambers to request a sentencing date right after this is concluded.

THE COURT: We will set a control date of August 12. I assume you'll get a date from his chambers in the short-term.

MR. COHEN: I will, your Honor.

THE COURT: As part of the process, Mr. Cohen, you should submit your case summary for purposes of the presentence report within the next 14 days.

Mr. Myers, you should make yourself and Mr. Lakou available for him to be interviewed by probation within the next 14 days as well, schedule permitting.

Is there anything else from the government?

MR. COHEN: No, your Honor.

THE COURT: Mr. Myers, anything further?

MR. MYERS: Nothing further, your Honor.

THE COURT: All right. Have a good day.

Have a good day, Mr. Lakou.

MR. COHEN: You, too, your Honor. Thank you.

(Adjourned)